

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii
Electric Light Company, Inc., and Maui
Electric Company, Limited.

DOCKET NO. 2008-0274

PUBLIC UTILITIES
COMMISSION

2009 DEC -3 P 12:14

FILED

**MEMORANDUM IN PARTIAL OPPOSITION TO MOTION FOR INTERIM
APPROVAL OF A DECOUPLING MECHANISM FOR HAWAIIAN ELECTRIC
COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND
MAUI ELECTRIC COMPANY, LTD. FILED NOVEMBER 25, 2009**

AND

CERTIFICATE OF SERVICE

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Blue Planet Foundation (“Blue Planet”), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, and pursuant to Rule 41(c), Hawaii Administrative Rules, hereby respectfully submits its Memorandum in Partial Opposition (“Partial Opposition”) to the Motion For Interim Approval of a Decoupling Mechanism for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company, Ltd. filed November 25, 2009 (“Motion”).¹

The Motion seeks what amounts to a final decision on the revenue adjustment mechanism (“RAM”) for the Hawaiian Electric Company, Inc. (“HECO”). The Motion does not seek any further decision by the Commission on the HECO RAM in this proceeding. Blue

¹ Blue Planet’s Partial Opposition is timely filed. See H.A.R. § 6-61-22 (Saturdays, Sundays and holidays excluded from the calculation of a time period less than seven days). It is noted that although Friday, November 30, 2009 was a Furlough Day for the State of Hawaii Department of Budget and Finance (and hence the Commission), it does not appear to be a holiday for purposes of H.A.R. § 6-61-22. See Executive Order 09-10 (Nov. 3, 1009) (Furlough days treated as a holiday for purposes of an administrative agency’s rules of practice and procedure should a “deadline or due date occur on a day for which an agency’s office is closed” because of furlough). *Id.* It is also noted that the Motion was served by electronic mail. See H.A.R. § 6-61-21(e) (two days added to period if document is served by mail).

Planet does not oppose the Motion's request for approval of the HECO RAM in general. Rather, Blue Planet opposes the Motion's request only insofar as it proposes that the Commission make no further decision on the HECO RAM in this proceeding. A final decision on the HECO RAM should be made in this proceeding, with the benefit of actual experience from trial implementation of the HECO RAM and with the full participation of all parties to this proceeding.

I. ARGUMENT

A. The Motion Seeks a Final Decision on the HECO RAM At This Time.

In their January 30, 2009 "Revenue Decoupling Proposal," the HECO Companies proposed:

that this decoupling docket remain open for two year [sic] following the Commission's final decision and order. Utility or Consumer Advocate requests to review the impact of the decoupling mechanism could then be filed under this docket. The request to review should include the basis for the request, supporting workpapers and exhibits identifying the facts underlying the basis for the request, and a proposed timeline for Commission review of the request.

Letter from R. Alm (HECO) to Commission dated Jan. 30, 2009, Attachment at 38 (emphasis added). Subsequently, the HECO Companies and Consumer Advocate² proposed that "the review of the continuation of the RBA and RAM provisions be undertaken in the Companies second round of rate cases, to occur in 2011 through 2013." See Joint Final Statement of the HECO Companies and Consumer Advocate filed May 11, 2009 ("Joint FSOP") at 27 (emphasis added); Opening Brief of Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited filed Sept. 8, 2009 at 44.

² State of Hawaii Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs.

The Motion now seeks an interim order for the “establishment and implementation” by HECO of the RAM as set forth in the Joint FSOP, and proposes continuation of this proceeding for the “primary purpose” of evaluating the design and potential adoption of clean energy performance incentive mechanism (“PIM”). *Id.* at 1-2. Although the term “primary purpose” is used, the Motion does not discuss or mention continuation of the proceeding for a final decision on the HECO RAM. Indeed, the Motion specifically proposes that the Commission “issue its final decision and order in this docket on outstanding issues such as the PIM in the October-December 2010 time frame” and that:

in the July 2011 timeframe, the Commission would issue an interim decision and order in the Hawaiian Electric 2011 test year rate case, including a determination as to whether decoupling will continue.

Motion at 20, n. 7 (emphasis added). Although a decision by the Commission and the parties to a subsequent HECO rate case as to whether to continue the HECO RAM is contemplated, such a decision is not equivalent to a final decision on the HECO RAM. The decision would be made in a rate case from which the intervenor parties to this proceeding would likely be excluded.

B. A Final Decision on the HECO RAM Should Be Made In This Docket On the Basis of Trial Implementation and Further Review by All Parties.

In its submissions to the Commission, HDA proposed an interim order on the express condition that the Commission’s final decision on the HECO RAM be made in this docket:

Approval of a RAM for HECO should be allowed initially for a one year pilot period to develop actual experience with decoupling and RAM implementation and allow the Commission more information and time to make any final determinations.

Haiku Design and Analysis Opening Brief filed Sept. 8, 2009 (“HDA Opening Brief”) at 22 (emphasis added). More specifically, HDA’s Opening Brief recommends an initial interim

decision and order to “[a]pprove a one year pilot implementation of the proposed RAM, applicable only to HECO[.] *Id.* (emphasis added). The docket would be kept open to further decide “whether the RAM should be extended beyond the one year pilot period or should be approved also for MECO and HELCO[.] *Id.* HDA affirmed that this approach would:

- allow the Commission to more carefully weigh the matter of permanent adoption of a revenue enhancing adjustment mechanism after some actual experience with implementation of the RAM
- provide an opportunity to gather additional necessary information (such as a projection of overall rate impacts of the decoupling and RAM mechanisms in conjunction with the other proposed HCEI tariffs, programs and resources)
- provide an opportunity to further examine several concepts explored in this proceeding and, for example, more carefully craft appropriate methods to allocate decoupling and RAM adjustments by customer class, provide performance incentives, ensure customer benefits and/or provide incentives for the utilities to control costs.
- allow the existing parties in this docket to further participate. If this docket is closed it is proposed that further review would take place in the context of future rate cases which are not accessible by most of the parties in this docket.

HDA Opening Brief at 8-9 (emphasis added).

In its Reply Brief, Blue Planet cited to the HDA Opening Brief and recommends that the Commission consider issuing an interim decision and order based upon the recommendations set forth in the HDA Opening Brief. Blue Planet specifically cited HDA’s recommendations for a “one-year implementation of the proposed RAM for HECO” and that the Commission determine in its final decision and order in this proceeding whether the HECO

RAM should be continued, modified or terminated. Reply Brief of Blue Planet Foundation at 11, n. 17.³

Consistent with HDA's proposal, the Commission should not issue a final decision on the HECO RAM in the absence of actual experience based on trial implementation of the HECO RAM and in this proceeding. HDA's proposal for an interim decision was premised upon the benefit to the Commission and all parties from actual experience based on trial implementation of the HECO RAM. The Motion seeks to deny the Commission and all parties in this proceeding the benefit of actual experience based on trial implementation in shaping a final HECO RAM.

Although the Consumer Advocate in its Reply Brief supports review of the HECO RAM within "the next HECO rate case," the Consumer Advocate also acknowledges that at such time "more will be known about progress toward implementation of the HCEI Agreement provisions, resolution of the various dockets before the Commission, service quality, customer impacts as well as the financial performance and financial condition of the utilities at that time." Division of Consumer Advocacy's Post-Hearing Reply Brief filed Sept. 29, 2009 at 33-34. It is suggested that this information can be used in this proceeding by all parties to assist the Commission in reaching a sound decision on the final HECO RAM. The Consumer Advocate further suggests the issues raised by the intervenor parties have been thoroughly discussed through filings, discovery and the panel hearing, yet acknowledge that the proposed decoupling

³ Blue Planet also suggested that the Commission's interim order indicate that the Commission shall seek to issue its final order in this proceeding no later than December 31, 2010. Blue Planet proposed this date primarily to ensure a timely final decision on the PIM. Blue Planet also suggested the interim order indicate that the 2010 HECO RAM continue until issuance of the interim decision and order in the HECO 2011 rate case. In light of Blue Planet's stated support for HDA's recommendation of a one-year pilot RAM, this refers to continuation of the accrual period of the RAM rather than a final decision on the RAM.

mechanism “has been substantially and improved by the collective input from all Parties.”

Consumer Advocate Reply Brief at 33, 35.

Given the fundamental change in ratemaking that the RAM represents, Blue Planet respectfully submits that additional “collective input” from the parties may help ensure that the Commission’s decision on the final HECO RAM meets with success and thereby contributes meaningfully toward supporting the utilities’ financial integrity and advancing Hawaii’s clean energy objective.

II. CONCLUSION

For all of the foregoing reasons, Blue Planet respectfully requests the Commission to deny the Motion only insofar as it proposes that the Commission make no further decision on the HECO RAM in this proceeding. A final decision on the HECO RAM should be made in this proceeding, with the benefit of actual experience from trial implementation of the HECO RAM and with the full participation of all parties to this proceeding.

DATED: Honolulu, Hawaii, December 3, 2009



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was
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